SECTION 8



GENERAL OVERVIEW

- A State Party is obligated to ensure its entities (whether governmental or industrial) comply with the Article VI requirements of the CWC, thereby ensuring the State Party is also in compliance with its obligations as a State Party to the Convention.
- The State Party's legislation should include administrative and criminal sanctions for violations of the norms of the Convention.
- Article VII requires a State Party to:
 - Enact legislation, including penal legislation, to enforce the prohibitions of the CWC;
 - Establish a National Authority to serve as the national focal point for effective liaison with the OPCW and other States Parties; and
 - Inform the OPCW of the legislative and administrative measures taken to implement the CWC and submit the text(s).

TECHNICAL SECRETARIAT COMPLIANCE ACTIVITIES

- The Technical Secretariat's role in implementing the Convention is to verify the information necessary for the assessment of States Parties' compliance with their treaty obligations. The Technical Secretariat accomplishes this mandate through analyzing declarations for accuracy and completeness, and ensuring appropriate chemical facilities or plant sites have been declared by a State Party, and conducting inspections.
- If the Technical Secretariat identifies an incomplete declaration or is unclear on the information contained in a declaration, it will contact the State Party to request a "clarification."
- One measure the Technical Secretariat uses to ensure that appropriate chemical facilities have been declared is to gather "publicly available information." In case of a perceived discrepancy the Technical Secretariat would request the State Party to "clarify" whether or not a particular facility should be declared.

Note: See attached Technical Secretariat Report entitled "The Project To Assist States Parties In Identifying New Declarable Facilities Under Article VI of the Chemical Weapons Convention" page 225 at the end of this section.

STATE PARTY COMPLIANCE ACTIVITIES

General

Once the State Party has established administrative measures to implement export and import requirements and compel the reporting of declarable information to the National Authority by facilities (plant sites), trading companies, or persons, it can then more easily manage the process of verifying individual declarations and aggregating data.

- A State Party should compile its own list of potentially declarable facilities (plant sites), trading companies, or persons based on a methodology such as the one contained under the "Chemicals" element, "How to Identify Your Chemical Industry" page 82.
- Additional suggestions for identifying facilities (plant sites), trading companies, or persons that may be subject to Article VI requirements include:
 - Developing a working relationship with industry by participating in company or association meetings;
 - Reviewing Customs data to identify exporters and importers of chemicals;
 - Reviewing publicly available information, such as chemical and trade association directories, on producers, users, and traders of chemicals;
 - Conducting a survey of all companies that may possibly deal with chemicals subject to data monitoring; and
 - Publishing notices of CWC requirements in newspapers, chemical magazines or other appropriate venues.

Export and Import Compliance

- Suggested methods for monitoring compliance with the export and import requirements of the CWC include:
 - Verifying that declarations, notifications, and End Use Certificates (EUCs) are received on time and are accurate and complete:
 - Establish domestic deadlines for reporting declarable information to the National Authority prior to the CWC's deadlines in order to verify the data before submitting information on transfers to the Technical Secretariat.
 - Cross-check Schedule 1 notifications with the detailed annual declaration on transfers of Schedule 1 chemicals.
 - Where a notification for a Schedule 1 transfer was received but did not occur, do not declare it to the Technical Secretariat. However, it is suggested that the Technical Secretariat be informed (e.g., via a cover letter with the annual declaration on transfers) of notified transfers that did not actually take place.
 - A State Party may want to establish an internal tracking system to ensure consistency between notifications and the annual declaration on transfers.
 - Share Schedule 1 notifications with States Parties involved in transfers to ensure that the notifications made to the Technical Secretariat by the sending and receiving States Parties match up.
 - Cross-check Schedule 3 EUCs with the AND declaration.
 - Using export and import authorisation data, if the State Party is issuing export/import authorisations, to verify submitted information.
 - Using Customs data on exports and imports to verify submitted information.

- Every scheduled chemical has been assigned a 6-digit Harmonized System (HS) code and a review of Customs records can provide information on what chemicals were exported or imported (see Annex on Chemicals located in Section 4).
- While the World Customs Organisation has not established unique HS codes for each Scheduled chemical, it has recommended that States do so nationally.
- A State Party could require exporters or importers to specify on domestic Customs documents whether a chemical is subject to the CWC to facilitate compliance checks.
- A State Party could require exporters to specify on documents such as shipping or sales invoices whether a chemical is subject to the CWC to alert a State Party recipient of the need to report to their National Authority.
- Implementing an EUC verification programme.
 - Ensure that the government agency issuing the EUC is the competent authority.
 - Consider establishing a mechanism to monitor and verify the bona fides of the end-user in the non-State Party via verification of business licenses or other means such as in-country verification activities.

Declaration Compliance

- After receipt of the initial declaration, the State Party should create a "list" or register of facilities (plant sites), trading companies and persons to ensure appropriate declarations are submitted in the future.
- For each declaration cycle, the National Authority should ensure it has received a declaration from all facilities (plant sites), trading companies or persons based on its initial or updated "list."
 - If a declaration is not received from a facility or plant site, the State Party should contact the declaration point-of-contact (D-POC) and inquire about the status of the facility (plant site), trading company or person, bearing in mind the State Party's applicable quantity thresholds and exemptions that would/would not trigger a declaration requirement.
- The National Authority should review each declaration received for accuracy and compliance in accordance with the following:
 - Information required under Parts VI-XI of the Verification Annex of the Convention, as appropriate;
 - Information required by the OPCW's Declaration Handbook, as applicable; and
 - State Party's legislative and administrative requirements and procedures (e.g., applicable quantity thresholds, exemptions).

- Declarations should also be reviewed for completeness because any missing information may result in the State Party receiving a "clarification request" from the Technical Secretariat.
- Review of a declaration may entail the following:
 - Verification of any ownership and name changes of the facility, plant site or plants;
 - Verification of address or location change for the facility or plant site (this is a rare occurrence, but it may happen as local authorities streamline districts, street names, mailing codes, etc.), including latitude and longitude coordinates that may have been changed;
 - Verification of the addition or deletion of declared plants on the plant site;
 - Verification of addition or deletion of Scheduled chemicals and activities (e.g., production, processing, and consumption);
 - Verification of addition or deletion of other activities, such as storage and repackaging;
 - Verification of the types of product group codes (found at the end of this section.) that were declared by a plant site, which may indicate a fundamental change in the operations of a plant site, especially for Other Chemical Production Facilities; and
 - Verification of questionable quantities of chemicals exported or imported.

Note: Once a facility or plant site has submitted a declaration(s), the National Authority can use its declaration(s) as a baseline from which to review and/or compare the current declaration, with a focus on identifying major changes or trends for the facility or plant site.

- If the National Authority has questions on a declaration or if information is missing, it should contact the D-POC.
- If a facility or plant site submitted a Declaration of Anticipated Activities (ADAA) for a particular year, it will likely have a requirement to submit an Annual Declaration of Past Activities (ADPA) for that same year (bearing in mind that these declarations are received 18 months apart).
 - A State Party should verify that such submissions are made and are consistent.
 - If no ADPA is submitted, the State Party should confirm with the D-POC that actual activities were below the applicable quantity thresholds.
 - If the ADPA differs from the ADAA, the State Party should confirm that a declaration of additionally planned activities was not required to be submitted.

Product Group Codes – Industry Descriptions

Product Group Codes (PGCs) (also known as Standard Industry Trade Classification (SITC) Codes) are required for completing declarations. The following is a generic description of certain PGCs that may be used as a reference when selecting appropriate ones to describe products relating to a plant site, plant or chemical when completing declarations. These descriptions are an attempt to clarify the PGCs identified in the OPCW's Declaration Handbook (Product Group Codes – Appendix 4) by making them more relevant to the types of industries that may be involved in a particular category of products. No description is provided for those PGCs that are self-explanatory. These descriptions are based on coordinating two classification systems: the North American Industry Classification System (NAICS, 1997 version) and the Standard Industry Classification System (SIC, 1987 version).

511 Hydrocarbons, N.E.S.*, and their halogenated, sulphonated, nitrated or nitrosated derivatives

This industry comprises establishments primarily engaged in manufacturing chemicals using basic processes, such as thermal cracking and distillation. The chemicals manufactured in this industry group are usually separate chemical elements or separate chemically-defined compounds and include:

- (1) acyclic (i.e., aliphatic) hydrocarbons such as ethylene, propylene, and butylene made from refined petroleum or liquid hydrocarbon; and/or
- (2) cyclic aromatic hydrocarbons such as benzene, toluene, styrene, xylene, ethyl benzene, and cumene made from refined petroleum or liquid hydrocarbons.
- 512 Alcohols, phenols, phenol-alcohols, and their halogenated, sulphonated, nitrated or nitrosated derivatives
 - This industry comprises establishments primarily engaged in distilling coal tars and/or manufacturing cyclic crudes, or cyclic intermediates from refined petroleum or natural gas.
- 513 Carboxylic acids and their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulphonated, nitrated or nitrosated derivatives
 - This industry comprises establishments primarily engaged in manufacturing basic organic chemical products (except aromatic petrochemicals, industrial gases, synthetic organic dyes and pigments, cyclic crudes and intermediates, and ethyl alcohol).
- 514 Nitrogen-function compounds
 - This industry comprises establishments primarily engaged in manufacturing acyclic and cyclic nitrogen-containing organic compounds, including nitrates, amides, amino acids.
- 515 Organo-inorganic compounds, heterocyclic compounds, nucleic acids and their salts, and

sulphonamides

This industry comprises establishments primarily engaged in manufacturing acyclic and heterocyclic organic-inorganic chemical products.

516 Other organic chemicals

This industry comprises establishments engaged in manufacturing organic chemicals that do not fit into any of the other categories.

- 522 Inorganic chemical elements, oxides and halogen salts
- 523 Metal salts and peroxysalts of inorganic acids
- 524 Other inorganic chemicals; organic and inorganic compounds of precious metals
- 525 Radioactive and associated materials

Radioactive chemical elements and radioactive isotopes (including the fissile or fertile chemical elements and isotopes) and their compounds; mixtures and residues containing these products.

531 Synthetic organic coloring matter and color lakes, and preparations based thereon

This industry comprises establishments primarily engaged in manufacturing synthetic organic and inorganic dyes and pigments, such as color lakes and toners (except electrostatic and photographic).

532 Dyeing and tanning extracts and synthetic tanning materials

> This industry comprises establishments primarily engaged in natural dyestuffs, and natural tanning extracts, as well as synthetic organic tanning materials.

Pigments, paints, varnishes and related materials 533

> This industry comprises establishments primarily engaged in manufacturing paints (in paste and ready-mixes form); varnishes; lacquers; enamels and shellac; putties, wood fillers, and sealers; paint and varnish removers; paint brush cleaners; and allied paint products.

541 Medicinal and pharmaceutical products, other than medicaments of Group 542

This industry comprises establishments primarily engaged in one or more of the following:

(1) manufacturing uncompounded biological and medicinal chemicals and their derivatives



(e.g., generally for use by pharmaceutical preparation manufacturers); and/or (2) processing (e.g., grading, grinding, and milling) uncompounded botanical herbs.

Medicaments (including veterinary medicaments)

This industry comprises establishments primarily engaged in manufacturing, processing and packaging medicinal chemicals and pharmaceutical products intended for human and animal internal and external use.

Essential oils, perfume and flavor materials

This industry comprises establishments engaged in manufacturing perfumes and flavor materials (natural and synthetic), cosmetics, and other toilet preparations.

Perfumery, cosmetic or toilet preparations (excluding soaps)

This industry comprises establishments primarily engaged in blending and compounding perfume bases and cosmetics; and those manufacturing toilet preparations, shampoos and shaving products.

Soap, cleansing and polishing preparations

This industry comprises establishments primarily engaged in manufacturing and packaging soap and other cleaning compounds, surface active agents, laundry detergents, dishwashing detergents, natural glycerin, and agents used to reduce tension or speed the drying process.

562 Fertilizers (other than those in Group 272)

This industry comprises establishments primarily engaged in one or more of the following:

- (1) manufacturing nitrogenous or phosphatic fertilizer materials;
- (2) manufacturing fertilizers from sewage or animal waste:
- (3) manufacturing nitrogenous or phosphatic materials and mixing with other ingredients into fertilizers; and
- (4) mixing ingredients made elsewhere into fertilizers.
- Polymers of ethylene, in primary forms
- Polymers of styrene, in primary forms
- Polymers of vinyl chloride or of other halogenated olefins in primary forms
- Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters
- Waste, parings and scrap, of plastics

- 581 Tubes, pipes and hoses, and fittings therefor, of plastics
- 582 Plates, sheets, film, foil, and strip of plastics
- 583 Monofilament of which any cross-sectional dimension exceeds 1mm, rods, sticks, and profile shapes, whether or not surface-worked but not otherwise worked, of plastics
- 591 Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (e.g., sulphur-treated bands, wicks and candles, and fly-papers)

This industry comprises establishments primarily engaged in the formulation and preparation of agricultural and household pest control chemicals.

592 Starches, inulin and wheat gluten; albumenoidal substances; glues

This industry is primarily engaged in wet milling corn and other vegetables.

- 593 Explosives and pyrotechnic products
- 597 Prepared additives for mineral oils and the like; prepared liquids for hydraulic transmission; anti-freezing preparations and prepared de-icing fluids; lubricating preparations

This industry comprises establishments primarily engaged in blending or compounding refined petroleum to make lubricating oils and greases and/or re-refining used petroleumlubricating oils.

598 Miscellaneous chemicals products, N.E.S.*

> This industry includes miscellaneous inorganic-organic chemical products that do not fit into any of the other categories.

- 599 Others
- * N.E.S. = not elsewhere specified



Executive Council

Thirty-Third Session 24 – 27 June 2003

EC-33/S/4 19 June 2003 Original: ENGLISH

NOTE BY THE TECHNICAL SECRETARIAT

SECOND REPORT ON THE PROJECT TO ASSIST STATES PARTIES IN IDENTIFYING NEW DECLARABLE FACILITIES UNDER ARTICLE VI OF THE CHEMICAL WEAPONS CONVENTION

1. Introduction

- 1.1 This report provides an update on the efforts undertaken by the Technical Secretariat (hereinafter "the Secretariat") to assist States Parties in their efforts to identify activities and facilities that might be subject to declaration under Article VI of the Chemical Weapons Convention (hereinafter "the Convention"), and is a follow-on to the previous report on a project, known as "the Article VI project", that was presented to the Executive Council (hereinafter "the Council") at its Twenty-Ninth Session (EC-29/S/6, dated 13 June 2002).
- 1.2 The Article VI project was initiated by the Secretariat in June 2001. Its goal is to provide technical assistance to States Parties through the identification of new potentially declarable plant sites under Article VI and Parts VII, VIII, and IX of the Verification Annex to the Convention.
- 1.3 The First Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention encouraged the Secretariat to continue these efforts, in close consultation with the States Parties and their National Authorities.

2. Methodology adopted

- 2.1 The Secretariat viewed it as important to carry out the project in as transparent and even-handed a fashion as possible. Therefore, the methodology it adopted in developing the project included the following steps:
 - (a) identifying, from open sources and for all Member States, facilities likely to be engaged in activities related to discrete organic, Schedule 2, and Schedule 3 chemicals;
 - (b) checking the total number of declared facilities (if any) against the number of potentially declarable facilities identified by the Secretariat, for the purpose of deciding the order in which the various States Parties would be approached;

CS-2003-3460(E) distributed 19/06/2003



- (c) transmitting relevant information to the National Authority of the State Party concerned for its consideration so that it can take any appropriate action in relation to its Article VI industry declarations. At this stage, the States Parties were informed that the names of the companies gleaned from public sources had not been checked against the names of already-declared plant sites. This statement was meant as a clear indication that the objective of the Article VI project was not to challenge the completeness of the declarations that had already been submitted by the States Parties, but to identify potentially new declarable facilities.
- 2.2 The project has been pursued in two parts:
 - In part 1, which was initiated in 2001, the Secretariat assisted those States (a) Parties that had not submitted any Article VI industry declarations as at May 2001 in identifying new declarable facilities.
 - (b) In part 2, which was initiated in 2002, the Secretariat started to include in the Article VI project those States Parties that had previously submitted Article VI declarations.
- Both parts of the project are currently ongoing. Paragraph 3 below provides a 2.3 chronology of events related to its development.
- 3. Part 1: assistance to States Parties that had not yet made Article VI declarations¹
- 3.1 In July and August 2001, information about the chemical industry in those States Parties that had not made any Article VI declarations was collected from open sources available to the Secretariat. Two States Parties that had made some Article VI declarations were also included in part 1, because, in the Secretariat's view, they would benefit from the additional assistance provided under the auspices of the Article VI project. A review of the available information on the chemical industries of 145 States Parties at that time suggested that 52 probably did not have any potentially declarable facilities. Of the remaining 93, 51 had already submitted Article VI declarations, and the other 42 seemed likely to have some declarable facilities.
- 3.2 From September 2001 to February 2002, representatives from the above-mentioned 44 States Parties (42 plus 2) were contacted by the Secretariat, and bilateral meetings were arranged at which the Article VI project was explained and packets containing the information that had been collected from public sources about the chemical industry in these States Parties were passed on to them. Representatives of these States Parties were requested to provide the information to their respective National Authorities, given that, according to the Convention, the National Authority is the entity that is assigned to identify declarable activities and facilities and that compiles the appropriate declarations, if necessary.

As at May 2001, when the information was assessed

4. Part 2: assistance to States Parties that had previously made Article VI declarations

- 4.1 In March 2002, part 2 of the Article VI project was initiated as an extension of part 1. It covered States Parties that had already made Article VI declarations, but that might, according to the information gleaned from open sources, have some additional declarable facilities. This assumption was based on the difference between the total number of facilities that had been declared by a given State Party and the number of facilities that, according to the Secretariat's analysis of the information acquired from public sources, might have declarable activities under Article VI. If the latter figure was greater than the former by more than 25%, the Secretariat considered it worthwhile to contact the State Party in question and provide it with an information packet. A number of States Parties to which the 25% criterion did not apply also requested the information packets.
- 4.2 Since July 2002, the project team has identified information in public sources for 55 out of the current 60 States Parties that have submitted Article VI declarations. No public-source information was available for 5 States Parties. For 3 others, the number of potentially declarable facilities for which information was available was smaller than the number of facilities actually declared. It was thought that these States Parties would not benefit from the information acquired by the Secretariat. Of the remaining 52 States Parties, 41 have so far been provided with information about potentially declarable facilities. The assessment of publicly available information for 2 States Parties is ready and will be delivered in close consultation with, and with the agreement of, their National Authorities in the near future. An assessment of the remaining 9 States Parties is in progress.
- 4.3 The objective of the project has been and remains close and productive cooperation with the States Parties. In the majority of cases, States Parties have responded with appreciation to the Secretariat's effort. Some of these 41 States Parties were found to have at least 25% more potentially declarable facilities than they had actually declared. The Secretariat consults States Parties concerned on how best to proceed.
- 4.4 During the meeting of National Authorities held in The Hague in October 2002, some States Parties with less than a 25% difference between declared and potentially declarable plant sites indicated that they would appreciate receiving the information packets, and four of these have since been provided with them.

5. Assessment of the results of the Article VI project

- 5.1 This section summarises the results of both parts of the Article VI project.
- 5.2 Of the 151 States Parties to the Convention as at 30 May 2003, the survey of open sources available to the Secretariat suggests that 55 are not likely to have any potentially declarable facilities under Article VI.
- Currently, 19 State Parties have not been approached. The Secretariat is of the view 5.3 that there is little or no information to justify approaching 8 of these. The Secretariat, will, upon agreement, contact the remaining 11 as soon as the project team has finalised its assessments.

- 5.4 Of the remaining 77 States Parties approached so far, 16 have not yet responded. The responses received from the remaining 61 States Parties can be categorised as follows:
 - Ten States Parties—Azerbaijan, Cuba, Georgia, Greece, Indonesia, Kuwait, (a) Pakistan, Peru, Uzbekistan, and Viet Nam-have submitted their first declarations of Article VI-related facilities.
 - Seven declaring States Parties have provided declarations in addition to those (b) they had already submitted prior to the Article VI project.
 - Thirty-two States Parties have either provided partial information or have (c) reported that they are working on providing information.
 - Twelve States Parties have reaffirmed that no additional declarations are (d) required.
- 5.5 Since the project began, there has been a significant increase in the number of declaring States Parties which is a welcomed indication that the project has been worth the effort and is achieving its purpose. When the project began in June 2001, there were 51 declaring States Parties. By the time of the first report to the Council in June 2002, there were 55; and that number had risen to 61 by the time of writing of the present report—an increase of 19.6% over the June 2001 figure.
- 5.6 These figures suggest that the Article VI project is helping to increase the number of newly declaring States Parties—an assessment confirmed both by the correspondence received from, and by informal discussions with, the overwhelming majority of States Parties concerned.
- Observations on States Parties' responses to the Article VI project 6.
- 6.1 As indicated above, most States Parties involved in the Article VI project have reacted positively to it and understood the goal behind it: to provide information available to the Secretariat that might be useful to the States Parties in their efforts to implement the Convention. Nevertheless, a small number of States Parties have voiced some concerns about the project. These are detailed below:
 - (a) Two States Parties have expressed concerns about the methodology used by the Secretariat to identify potentially declarable facilities and would favour a more proactive approach by the Secretariat.
 - (b) One State Party has indicated that it does not believe that the Convention authorises the Secretariat to undertake the initiative and thus finds it unacceptable.
 - One State Party has expressed concerns about the possible dissemination of (c) confidential information to other States Parties.

- 6.2 Over the course of the Article VI project, representatives of some States Parties have conveyed to the Secretariat certain difficulties they have faced in making Article VI declarations. These include:
 - a lack of implementing legislation in their countries; (a)
 - (b) a lack of funding for implementation; and
 - (c) limitations on the human resources available to National Authorities, which would make it difficult for them to liase with the representatives of facilities and with other local authorities, even if the Secretariat were to provide technical assistance.

7. Follow-up actions on the Article VI project

- 7.1 The Secretariat intends to continue evaluating public-source industry information on the remaining 11 States Parties and on any newly ratifying States Parties, and to provide information packs with the mutual consent of these States Parties.
- 7.2 The Secretariat will continue to use all available opportunities, such as National Authority courses, seminars and workshops, to organise bilateral meetings with representatives of States Parties to update the progress of the Article VI project.
- 7.3 When officially requested to do so by a State Party, the Secretariat will put at its disposal qualified staff to assist it in identifying declarable activities and facilities. Any such assistance will be provided in the form of a technical visit whose agenda and duration the Secretariat and the State Party concerned will agree on.
- 7.4 The Secretariat would like to take this opportunity to thank States Parties for their cooperation on the project and to encourage those States Parties that have the technical expertise and/or the funds, to consider providing voluntary assistance, on a regional or other basis to be decided, to those States Parties that currently do not posses such resources.
- 7.4 The Secretariat will submit to the Council, at its Thirty-Fifth Session, further updated information on the progress of the Article VI project.

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OPCW

Executive Council

Thirty-Sixth Session 23 - 26 March 2004

EC-36/DEC.7 26 March 2004 Original: ENGLISH

DECISION

CLARIFICATION OF DECLARATIONS

The Executive Council,

Considering that clarification requests help the Technical Secretariat (hereinafter "the Secretariat") to effectively carry out its functions under the Chemical Weapons Convention (hereinafter "the Convention");

Further considering that timely responses by States Parties to such requests for clarification promote the effective and efficient implementation of the verification regime of the Convention;

Affirming the need for States Parties to improve implementation by pledging to respond to such requests as fully and as expeditiously as possible;

Specifying that nothing in this decision prejudices existing obligations under the Convention or creates additional ones;

Recalling the requirements under Article VIII, paragraph 40 of the Convention; and

Recognising the need to continue work on this issue, in particular on the issue of clarification of transfer discrepancies, and on the need for the Secretariat to continue to explore how it can best exchange confidential information with States Parties in accordance with the confidentiality procedures of the Convention;

Hereby:

Urges all States Parties to expedite responses to requests for clarification of their declarations, when these declarations do not involve other States Parties (i.e. transfer discrepancies), as follows: to send an initial response within 90 days after the official transmittal of the Secretariat's request which either responds fully to the request or indicates what steps they are taking to develop and communicate a full response; and

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Recommends that, when the Secretariat issues a clarification request regarding possible errors or missing information in a submitted declaration that preclude the Secretariat from determining the facility's inspectability and receives no response from the State Party concerned within 90 days after the official transmittal of the Secretariat's request, the Secretariat inform the Council about the specific request in advance of its next regular session. The Secretariat will provide, 60 days following the issuance of the clarification request, a reminder to the State Party concerned.

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SECTION 9

